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 9 *Attorney for JV Wholesalers, LLC*

10  
 11 **IN THE UNITED STATES DISTRICT COURT**  
 12 **FOR THE DISTRICT OF ARIZONA**

13  
 14 BPH Capital, LLC., a Delaware limited  
 15 liability company,

16 Plaintiff,

17 v.  
 18 JV Wholesalers, LLC, a New Jersey  
 19 limited liability company dba Century  
 Motor Cars; Victor C. Breen and Tara  
 Breen, husband and wife; James M.  
 Lithgow, Jr. and Jane Doe Lithgow,  
 20 husband and wife; Peter J. Cappiello Sr.  
 and Ann Cappiello, husband and wife;  
 ABC Corporations, 1-10; DEF  
 Partnerships, 1-10; GHI Limited Liability  
 Partnerships, 1-10; John Does, 1-10; and  
 Jane Does, 1-10,

21 Defendants.

22 Case No. 2:22-cv-00143-PHX-DJH

23  
**MOTION TO DISMISS**  
**COMPLAINT WITH PREJUDICE**

24  
 25 Pursuant to Local Rule of Civil Procedure LRCiv 7.2 (Tyler please confirm), Golden  
 26 Hirschhorn LLP, through undersigned counsel, applies by motion to the Court for an order  
 27 dismissing the complaint of Plaintiff, BPH Capital, LLC ("BPH"), or in the alternative

1 striking the complaint filed by BPHH and dismissing the action Local Rule of Civil Procedure  
2 LRCiv 7.2(m), as a result of BPHH's failure to the order dated March 4, 2024, which appears on  
3 the docket in this matter as document 91, which required BPHH to "on or before April 5, 2024,  
4 Plaintiff must either retain substitute counsel and counsel must file a notice of appearance". The  
5 Court's efforts to reach BPHH and its principal, Victor Breen, were returned as "unable to  
6 forward", as reflected on the docket, document numbers 92 and 93. All efforts by our office and  
7 Wilenchik & Bartness P.C. to contact or communicate with BPHH have been unsuccessful.  
8

9 The conduct by BPHH indicates that, Plaintiff has abandoned this action without any  
10 further attempt to prosecute the complaint.

11 This matter has not been set for trial. This motion is being served on BPHH and all other  
12 parties or their attorneys. The last know address for BPHH's contact information is as follows:  
13

14 BPHH  
15 c/o Daniel Serpe  
16 4850 W. Glendale Ave.  
17 Glendale, AZ 85301

18 Or

19 13634 S. Canyon Dr.  
20 Phoenix, AZ 85048

21 Serpe8858@gmail.com  
22 don@bphcap.com

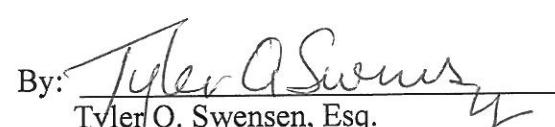
23 This motion is also accompanied by a proposed form of order.

24 Accordingly, Golden Hirschhorn LLP and Wilenchik & Bartness, P.C. respectfully  
25 requests that the Court enter the proposed order submitted with this motion.

26 RESPECTFULLY SUBMITTED this 26 day of April, 2024.  
27

1 GOLDEN HIRSCHHORN LLP  
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3  
4 By:   
5 Lisa M. Golden, Esq.  
6 1050 Franklin Avenue, Ste. 108  
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9 And Ann Cappiello

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WILENCHIK & BARTNESS, P.C.

9 By:   
10 Tyler Q. Swensen, Esq.  
11 The Wilenchik & Bartness Building  
12 2810 N. 3rd Street  
13 Phoenix, Arizona 85004  
14 Attorneys for JV Wholesalers, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that April 26 2024, I electronically transmitted the attached document to:

Via U.S. Mail to:

Victor C. Breen and Tara Breen  
398 Main Street  
West Creek, NJ 08092  
*Defendants Pro Per*

James M. Lithgow Jr.  
10908 Tarflower Dr.  
Venice, FL 34293  
Defendant Pro Per

Via U.S. Mail and Email to:

BPHH  
c/o Daniel Serpe  
4850 W. Glendale Ave.  
Glendale, AZ 85301

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13634 S. Canyon Dr.  
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/s/ Heidi Wellbrock